REMARKS

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement; rejected claims 1, 3, 6, 8, 9, 11, 12, and 14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,167,383 to Henson ("*Henson*"), U.S. Patent No. 7,113,919 to Norris et al. ("*Norris*"), U.S. Patent No. 6,782,551 to Entwistle ("*Entwistle*"), in view of U.S. Patent No. 6,188,989 to Kennedy ("*Kennedy*"); and rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over *Henson*, *Norris*, *Entwistle*, and *Kennedy* in view of U.S. Patent No. 5,974,395 to Bellini ("*Bellini*").

By this amendment, Applicant amends claim 1. Support for the amendment to independent claim 1 can be found, for example, at ¶ [0267] and Figure 23 of Applicant's Published Patent Application (No. 2002/0184110). Claims 1 and 3-55 are pending with claims 1, 3, 4, 6, 8, 9, 11, 12, and 14 presented for examination, and claims 5, 7, 10, 13, and 15-55 withdrawn from consideration.

Applicant respectfully traverses the finality of the Office Action. As stated in the MPEP:

> "it would not be proper to make final a first Office action in . . . an RCE . . . where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised." MPEP § 706.07(b) (emphasis added).

The Examiner did not enter the Amendment After Final filed June 5, 2008, because it was deemed to raise new issues that would require further search and consideration. *Advisory Action.* Accordingly, Applicants filed an RCE on July 17, 2008.

Because the material entered by the RCE was previously presented after final and denied entry, the finality of the Office Action after the RCE is improper and should be withdrawn.

Applicant respectfully traverses the rejection of claim 1 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. The Examiner alleged that the phrases "inventory" and "functionality" are not supported by Applicant's specification. Applicant amends claim 1 to remove the phrase "inventory." Moreover, the phrase "functionality" is supported by ¶ [0267] of Applicant's Published Patent Application ("The 'over-equipment' herein means provisions of the same function in duplex form.") Accordingly, claim 1 complies with the written description requirement of 35 U.S.C. § 112, first paragraph.

Applicant respectfully traverses the rejection of claims 1, 3, 6, 8, 9, 11, 12, and 14 under 35 U.S.C. § 103(a) as being unpatentable over *Henson*, *Norris*, *Entwistle*, and *Kennedy*. *Henson*, *Norris*, *Entwistle*, and *Kennedy* do not teach or suggest the subject matter of the claims.

Amended independent claim 1 recites a commodity selling apparatus for accepting an order of a commodity in response to a customer's request to purchase the commodity over a network, including "attention instigation transmitting means for transmitting attention instigation information when one of the related commodities from the proposed order includes a same functionality as the commodity, wherein the related commodity further includes a different functionality than the commodity."

On page 4 of the Office Action, the Examiner concedes that *Henson* and *Norris* do not teach the claimed "attention instigation means."

Entwistle does not cure the deficiencies of *Henson* and *Norris*. *Entwistle* discloses an electronic programming guide (EPG), which keeps track of programming that the user has already viewed. *Entwistle*, col. 4, lines 19-21. When a previously viewed program is subsequently shown again by the broadcaster, the user is notified that he/she has already viewed the program. *Id.* at lines 25-30; item 12, Figure 1B.

Entwistle's user notification does not teach or suggest the claimed "attention instigation transmitting means," at least because *Entwistle's* previously aired program and subsequently aired program do not include "a different functionality," as recited in claim 1. Instead, *Entwistle's* previously aired program was the same program as *Entwistle's* subsequently aired program. *Entwistle*, col. 3, lines 46-50.

Accordingly, *Entwistle* does not teach or suggest "attention instigation transmitting means for transmitting attention instigation information when one of the related commodities from the proposed order includes a same functionality as the commodity, wherein the related commodity further includes a different functionality than the commodity," as recited in claim 1.

Kennedy fails to cure the deficiencies of *Henson*, *Norris*, and *Entwistle*. *Kennedy* fails to teach or suggest at least the claimed "attention instigation transmitting means."

For at least these reasons, *Henson*, *Norris*, *Entwistle*, and *Kennedy*, even if combined as suggested by the Examiner, fail to teach or suggest the subject matter of claim 1. Claims 3, 6, 8, 9, 11, 12, and 14 depend from claim 1.

Applicant respectfully traverses the rejection of claim 4 under 35 U.S.C. § 103(a) as being unpatentable over *Henson*, *Norris*, *Entwistle*, *Kennedy*, and *Bellini*.

Claim 4 depends from claim 1 and requires all recitations therein. As discussed previously, *Henson*, *Norris*, *Entwistle*, and *Kennedy* fail to teach or suggest the subject matter of claim 1.

Bellini fails to cure the deficiencies of *Henson*, *Norris*, *Entwistle*, and *Kennedy*. *Bellini* fails to teach or suggest at least the claimed "attention instigation transmitting means." Accordingly, *Henson*, *Norris*, *Entwistle*, *Kennedy* and *Bellini* fail to teach or suggest the subject matter of claim 4.

In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 

Fahd Hussein Patel
Reg. No. 61,780
(202) 408-6072